

(1) The Administrative Law Judge found claimant's February 20, 1998, left shoulder injury arose out of and in the course of his employment with the respondent. Claimant testified he injured his left shoulder while backing a semi-trailer truck into a customer's dock. Claimant testified the right front tire of the truck hit a curb that abruptly jerked the steering wheel to the right which caused a sudden onset of pain in his left shoulder.

Claimant notified the respondent of the injury and sought medical treatment through his personal physician, Douglas W. Curry, M.D., a member of the Riverside Health System located in Wichita, Kansas. Claimant was diagnosed with left shoulder sprain and tendinitis. He was taken off work, prescribed pain medication, instructed to use ice, and his left arm was placed in a sling.

Claimant was sent by respondent to the Wichita Clinic, P.A. Claimant was seen on February 24, 1998, by G. Andrew McNickle, M.D., a doctor associated with that clinic. Dr. McNickle diagnosed claimant with a left shoulder strain and referred claimant to physical therapy. Dr. McNickle saw claimant again on March 2, 1998, assessed a possible rotator cuff tear, and recommended claimant be referred for further treatment to an orthopedic surgeon.

Respondent denied claimant's claim for workers compensation benefits because before this alleged work accident on February 11, 1998, claimant injured his left shoulder wrestling with his wife at home. Claimant came to work on the day following that incident unable to use his left arm. After he reported to work, claimant went to Wesley Medical Center emergency room in Wichita, Kansas, for examination and treatment. The emergency room doctor diagnosed claimant with a muscle injury of the left shoulder, took claimant off work for four days, and referred claimant to his personal physician for further treatment if needed.

Claimant was examined by a nurse practitioner at Riverside Health System on February 16, 1998. At that time, the nurse practitioner found claimant to have a good range of motion of the left shoulder and minimal tenderness. Claimant was returned to work and was able to perform his truck driving job duties for the respondent on February 17, 18, 19, and until he was injured on the 20th.

The preliminary hearing record contains a letter from Douglas W. Curry, M.D., who examined claimant on February 20, 1998, after his alleged accident at work. Dr. Curry's letter contains a description of the accident consistent with claimant's preliminary hearing testimony. Dr. Curry's physical examination of the claimant found significant tenderness over the AC joint and the anterior part of claimant's left shoulder. Claimant was unable to lift his arm over his shoulder. Dr. Curry noted, that following claimant's accident at home, nurse practitioner Diane Steeves had examined the claimant on February 16, 1998, and had found claimant had good range of motion of the left shoulder with only minimal tenderness. Dr. Curry then concluded that claimant's left shoulder injury "does indeed appear to be a work related injury."

The respondent contends, however, that claimant did not injure his left shoulder at work on February 20, 1998. The respondent argues claimant's current left shoulder problems all occurred on February 11, 1998, as a result of the incident that occurred while he was wrestling with his wife.

The Appeals Board disagrees and finds claimant's testimony, coupled with the medical records admitted into evidence at the preliminary hearing, proves it is more likely than not that claimant either suffered a new shoulder injury or aggravated a preexisting shoulder condition at work on February 20, 1998. If a worker has a preexisting condition, such condition is compensable if it is aggravated or accelerated by one's work activities. See Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, Syl. ¶ 1, 573 P.2d 1036 (1978).

Thus, the Appeals Board affirms the Administrative Law Judge finding that claimant suffered a work-related injury.

(2) Respondent questioned the Administrative Law Judge's authority to order it to provide medical treatment for claimant's injury, payment of medical expenses, and payment of temporary total disability benefits. However, respondent failed to present argument in its brief on this issue.

The Appeals Board finds, as it has on numerous occasions, it does not have jurisdiction, at this stage of the proceedings, to review a preliminary hearing finding of the Administrative Law Judge in regard to medical treatment and temporary total disability compensation. The preliminary hearing statute gives the Administrative Law Judge the authority to grant or deny a request for medical and temporary total disability compensation pending a full hearing on the claim. See K.S.A. 1997 Supp. 44-534a(a)(2).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge John D. Clark's March 26, 1998, preliminary hearing Order should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1998.

BOARD MEMBER

c: James B. Zongker, Wichita, KS
Vincent A. Burnett, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director